1683.

SUPREME COURT OF THE UNITED STATES.

No. 182.

ELIJAH PEALE, TRUSTEE OF THE AGRICULTURAL BANK OF MISSISSIPPI, PLAINTIFF IN ERROR,

vs.

MARTHA PHIPPS AND MARY BOWERS, WIFE OF CHARLES RICE.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF LOUISIANA.

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GIDEON, Print.

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

M. PHIPPS and M. RICE
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

Pleas and proceedings before the honorable circuit court, fifth circuit and eastern district of Louisiana, at a circuit court of the United States, in and for the fifth circuit and district aforesaid, being the December term of said court, held at the city of New Orleans on the eleventh day of January, A. D. 1849.

Be it remembered, that heretofore, to wit, twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-eight, came Mary Phipps and Mary Rice, by their attorneys, Prentiss & Finney, in the clerk's office of the said court, and filed a petition which is in the words and figures following, to wit:

Petition.

To the honorable the judges of the fifth judicial circuit of the United States, holding session in the city of New Orleans, in and for the district of Louisiana.

The petition of Martha Phipps and Mary Bowers, wife of Charles Rice, who is authorized and assisted in this suit by her said husband Charles, all of whom are citizens of the State of Louisiana, and residents of the city of New Orleans, respectfully represents, that Elijah Peale, a citizen of the State of Mississippi, in his capacity of trustee and assignee of the president, directors, and company of the Agricultural Bank of Mississippi, a corporation created by the laws of Mississippi, and located until the term of its dissolution, as hereafter stated, at Natchez, in said State of Mississippi, is justly indebted to your petitioners in the sum of thirty-four thousand dollars, for this, to wit:

That petitioners are, and have been, ever since the day of 1839, the true and lawful owners of two undivided third parts of a certain lot or parcel of land, situate on Main street, in the city of Natchez, in the county of Adams, and State of Mississippi, more particularly described as follows, viz., beginning on Main street aforesaid, between Wall and Canal streets, at the corner of a lot belonging to the heirs of Samuel Postlethwaite, deceased; thence along the northwestern side of Main street, west, to the line of a lot formerly owned by Adam Bowen, and bequeathed by him to his widow for life; thence north, along the eastern boundary line of said last mentioned lot, to the line of a lot owned by L. R. Marshall; thence along said line to the

line of the lot aforesaid belonging to the heirs of Samuel Postlethwaite, deceased; and along said line to the place of beginning. The said lot being well known in the city of Natchez as the lot on which stands the City Hotel and its appurtenances. Your petitioners further state that on said day of 1839, being owners of two undivided third parts of said lot they were expelled and removed from the possession and occupation thereof by the said president, directors, and company of the Agricultural Bank of Mississippi.

That on the day of these petitioners commenced an action of ejectment in the circuit court of the United States, for the southern district of Mississippi, against said Agricultural Bank and others in possession, in which suit, at the November term, 1843, of said court, these petitioners recovered judgment against the defendants therein, for said two undivided third parts of said lot, whereupon the defendants therein appealed to the Supreme Court of the United States, which court, after due proceedings had, on the day of affirmed the judgment in favor of petitioners. And thereupon your petitioners sued out upon their said judgment a writ of "habere facias possessionem," under which, on the day of May, 1847, they took possession of the two undivided third parts of said lots, which they have ever since peaceably held and enjoyed. Petitioners further say, that from the time they were expelled and removed from the possession of their said interest and property in said lot in 1839, they have been kept illegally out of the possession and occupation thereof, and from the receipt and enjoyment of the rent and profits thereof by said Agricultural Bank, until they obtained possession in May, 1847, as aforesaid.

That said Agricultural Bank, since their illegal possession as aforesaid, to wit, from the said day of 1839, until the day of May, 1847, have enjoyed, received, and appropriated to their own use, all the rents, issues, and profits of said lot and premises; which rents, issues, and profits were of the yearly value of six thousand dollars, and the portion to which your petitioners were and are entitled, were of the yearly value of four thousand dollars, all of which petitioners claim and demand of defendants, together with interest at the rate of eight per cent. per annum upon the yearly rents from the time they respectively accrued.

Petitioners further state, that since the said Agricultural Bank have been in the possession of said lot and appurtenances they have, by their wilful neglect, bad management, and gross carelessness, caused great and irreparable damage and injury to said property. That they have failed to have the proper and necessary repairs put upon the buildings, by reason whereof the same have become greatly dilapidated, and the whole property much diminished in value. And petitioners aver that, by reason of the wilful neglect, carelessness, and bad management of said defendants, their agents and tenants, they have been damaged and suffered injury in the two-thirds of said premises belonging to them to the amount of ten thousand dollars; which sum they in like

manner demand and claim of said defendants for their damages sustained as aforesaid.

Petitioners further state, that in the prosecution of their said proceedings in their action of ejectment aforesaid, and in said appeal, and in the defence of said suit for an injunction, instituted by defendants and others against these petitioners as aforesaid, they have incurred great expense and costs, and were compelled to disburse and pay out large sums of money, in all amounting to ten thousand dollars.

Wherefore, petitioners charge that said defendant is liable as trustee and assignee as aforesaid, and bound in law to pay them said ten thousand dollars.

Petitioners further state, that on the day of , by a decree and judgment of the circuit court of Adams county, in said State of Mississippi, a court of competent power and jurisdiction in the premises, the charter of said president, directors, and company of the Agricultural Bank of Mississippi was declared forfeited, and the said corporation, by virtue of said judgment and decree, was dissolved, ceased to exist, and no longer does exist.

Petitioners further state, that by the order, judgment, and decrees of said court, the said defendant, Elijah Peale, was appointed trustee and assignee of said president, directors, and company of the Agricultural Bank of Mississippi, and accepted the trust, and is now the sole legal representative of said defunct corporation.

And petitioners aver and state, that by reason of said appointment by the decree and order of said court, and by operation of law, all the assets and property of said corporation vested in said defendant as assignee as aforesaid, and by reason thereof he became liable, and is liable, to the creditors of said corporation to the extent of the assets which have or may come to his hands.

Petitioners further state, that property and assets of the said corporation have come into the hands and possession of said defendant, and are still in his possession, amply sufficient to pay all the debts of said corporation.

And petitioners aver that said defendant, Elijah Peale, as trustee and assignee as aforesaid, is in law liable and bound to pay to your petitioners the sum of thirty-four thousand dollars above demanded, due to them by the said president, directors, and company of the Agricultural Bank of Mississippi for damages, rents, and mesne profits as aforesaid.

Petitioners further state, that they have made amicable demand of the said defendant, and have presented to him and demanded payment of the account hereto annexed, and made part of this petition, but said defendant positively refused to pay any part of said account and claim, or to acknowledge the same, and still refuses.

Wherefore, the premises considered, petitioners pray that defendant, Elijah Peale, be duly cited, and that after due proceedings had, he be compelled and decreed to pay your petitioners, out of the assets of the Agricultural Bank in his hands, the sum of four thousand dollars for each and every year since the day of , 1839, until the 22d

May, 1847, as rents, issues, and mesne profits, for their undivided two-thirds part of said City Hotel, and as damages for the trespass committed by said Agricultural Bank in turning and keeping them out of possession as aforesaid, with interest at the rate of 8 per cent. per annum upon each year's rent from the time it accrued; also, ten thousand dollars, as per account annexed, for costs, expenses, and counsel fees, &c., incurred in conducting said ejectment and in defending said appeal and other proceedings had by said Agricultural Bank.

Petitioners further pray that defendant pay costs of this suit, and they ask also for general relief.

PRENTISS & FINNEY,
Plaintiffs' attorneys.

Account.

The President, Directors, and Company of the Agricultural Bank of Mississippi, to Martha Phipps and Mary Rice, Dr.

22d May, 1847.	
To damages and mesne profits due at this date for the wrongful and illegal possession and detention of the lot of land and the appurtenances, situate in the city of Natchez and State of Mississippi, and known as the "City Hotel," from the day of 1839, to the 21st day of May, 1847, the interest of said Martha Phipps and Mary Rice being two undivided third parts, and their damages for the trespass and illegal detention being estimated at $3,000 per annum - - - - - - - -	$24,000
22d May, 1847.	
To expenses, costs, and counsel fees incurred in prosecuting an action of ejectment against said Agricultural Bank for two-thirds of said City Hotel, and in defending the judgment obtained against said Agricultural Bank upon appeal to the Supreme Court of the United States, and in defending a suit in chancery brought by said bank enjoining said judgment - - - - - - -	10,000
Total amount due - - - - - -	$34,000

The foregoing account is presented by Martha Phipps and Mary Rice to J. A. Van Dalsen and C. L. Dubuisson, com., trustees of the Agricultural Bank, and they demand that the above sum of $34,000 be audited and allowed by the assignees, &c., as a just claim against said bank.

MARTHA PHIPPS & MARY RICE,
By their attys. PRENTISS & FINNEY.

To ELIJAH PEALE, *trustee of Agricultural Bank.*

On behalf of Martha Phipps and Mary Rice we hereby demand of

you, as trustee of the Agricultural Bank, the payment of the within account of thirty-four thousand dollars, and if you cannot pay the same, that you acknowledge the claim as good and valid.

New Orleans, 20th April, 1848.

PRENTISS & FINNEY,
Attorneys for Martha Phipps and Mary Rice.

And afterwards, to wit, on the 5th day of June, A. D. 1848, the defendant, Elijah Peale, by his counsel, R. Mott, esq., filed in the clerk's office the following

Exceptions and answer.

United States circuit court, for the district of Louisiana.

MARTHA PHIPPS & MARY RICE
vs.
E. PEALE, trustee, &c. } No. 1705.

Now comes Elijah Peale, trustee of the Agricultural Bank of Mississippi, and excepts to the right of the plaintiffs to have and maintain their action against him on the grounds following:

1st. Because all the parties in interest are not joined as plaintiffs.

2d. Because the charter of the Agricultural Bank was declared forfeited, and the said bank put in a course of liquidation as an insolvent corporation, and this defendant appointed trustee, for the purpose of collecting the assets thereof, by the circuit court of Adams county, in the State of Mississippi; and said trustee is not amenable to any other court than the one that appointed him, and of which he is the officer; and this court has no jurisdiction whatever of him in his said capacity.

3d. Because, by an act of the legislature of the State of Mississippi, approved 28th February, 1846, a board of commissioners was created, for the express purpose of examining and auditing all claims against the said Agricultural Bank, as well as other banks in a course of liquidation, and directing the trustees to pay only such amounts or claims as should be by said board duly audited. That the commissioners for the Agricultural Bank have been duly appointed and acting for some time past, and the plaintiffs can only prosecute their claim in that way.

4th. Because the said plaintiffs have recognised the authority of the said commissioners by presenting their claim to them, which has been refused; and the recourse properly is, to oppose the report of the said commissioners, when made, to the circuit court of Adams county, in which the affairs of the said insolvent corporation are being liquidated.

5th. Because the said plaintiffs cannot maintain a suit for expenses, costs, (not costs of court,) and counsel fees, incurred in prosecuting the suit for the recovery of the said property. Wherefore defendant prays to be hence dismissed.

But if these exceptions are overruled, and not otherwise, the said Peale, as trustee, files the following answer and reconvention:

This respondent denies generally all the allegations in plaintiff's petition contained, and specially their right of recovery herein, and that he ever received any rents or profits from the said property, or caused the plaintiffs any damage. And this respondent further answering avers that, during the entire period during which the Agricultural Bank had possession of the said property, and received the rents thereof, the said house or hotel was fully furnished and supplied with all the household furniture, &c., necessary for the prosecution of the business of hotel-keeping, and that was a great part of the consideration of the rent paid by the tenants for the said property.

And respondent further avers, that, while the said property was in the possession of the said bank, and those from whom they derived title and purchased the said property, improvements, embracing the entire building, kitchen, &c., constituting the hotel, with necessary out-houses and stables, were put on said property, and were, and are, of the value of one hundred thousand dollars; that when the plaintiffs were ousted or dispossessed of said property, there were no improvements whatever on the same; that by the law of Mississippi and Louisiana the said bank was, and this respondent is, entitled to be paid the value of the said improvements. Wherefore he prays that the claim of the plaintiffs be dismissed, and that he be allowed to reconvene, and plaintiffs cited to answer this reconvention, and condemned to pay respondent the sum of $66,666 66$\frac{2}{3}$ *dollars*, and costs, and for general relief, &c.

RO. MOTT.

Admission of counsel.—Filed January 11th, 1849.

In the circuit court of the United States, district of Louisiana.

MARTHA PHIPPS & MARY RICE
vs.
ELIJAH PEALE, trustee of Agricultural bank.

It is agreed between the parties in the above named suit, by Prentiss and Finney, attorneys for the plaintiffs, and Robert Mott, attorney for the defendant, that the following facts shall be admitted upon the trial of the cause, and the same are hereby admitted:

1st. That the president, directors, and company of the Agricultural Bank of Mississippi were in possession of the City Hotel, being the premises the mesne profits of which are sued for on the 1st day of December, 1839.

2d. It is admitted that the said hotel and furniture rented from said 1st day of December, 1839, until 1st November, 1842, for the sum of six thousand dollars per annum, and from said 1st November, 1842, until plaintiffs took possession at the rate of four thousand dollars per

annum, and that said rates shall be considered as the fair annual rent of said property during said periods.

3d. It is admitted that the charter of the Agricultural Bank has been adjudged forfeited under the laws of Mississippi, and that the defendant, Elijah Peale, is the trustee appointed under and by virtue of said laws, to represent the said corporation.

4th. It is admitted that the claim sued on was, before the commencement of this suit, presented to the commissioners appointed in Mississippi, to audit and allow claims against said bank, to wit, to J. A. Van Dalsen and C. L. Dubuisson, and they were requested to audit and allow the same, but that they refused to audit, allow, or any way recognise the same.

5th. It is admitted that the claim sued on was before the commencement of this suit presented to the defendant, as trustee of said Agricultural Bank, and he was requested to allow the same as a just and valid claim against said bank; but that said defendant, as trustee as aforesaid, refused to admit, recognise, or allow said claim, or any part thereof.

6th. It is admitted that the fees of counsel employed by the plaintiffs in the prosecution of the suit of ejectment against the Agricultural Bank, for the recovery of said City Hotel, in the circuit court and Supreme Court of the United States, exceeded in value the sum of two thousand dollars, and that said sum of $2000 *dollars* would be a reasonable fee for the conduct of said suit from its commencement to its termination.

It is admitted that the furniture of house, &c., on the premises, formed part of the rent in the proportion of one-fourth to three-fourths thereof.

It is admitted that the charter of the bank was declared forfeited by law, and the assets of the bank put in the possession of the defendant, who still holds the same as trustee or representative.

RO. MOTT, *Attorney.*
PRENTISS & FINNEY,
For plaintiffs.

It is further admitted, that the Agricultural Bank had stopped specie payments previous to the time of the forfeiture of the charter, and did not afterwards resume. PRENTISS & FINNEY,
Plaintiffs' attorneys.

And on the 11th day of January, 1849, the defendant, by his attorney, Robert Mott, esq., filed in the clerk's office the following:

Plea of prescription.

MARTHA PHIPPS AND MARY RICE
vs.
ELIJAH PEALE, trustee. } No. 1705.

The defendant now pleads prescription to the entire claim, and claims of the plaintiffs, and prays to be hence dismissed with costs, &c.

RO. MOTT, *Attorney.*

And afterwards, to wit, on the 11th day of January, 1849, the following entry was made of record on the minutes:

MARTHA PHIPPS AND MARY RICE
vs.
ELIJAH PEALE, trustee. } No. 1705.

The trial of this cause being assigned for this day, appeared in court this day, the respective parties, plaintiffs and defendant, by their counsel. The exceptions filed by the defendant were first taken up, and after argument of counsel submitted to the court; whereupon the court ordered, that the same be, and are hereby, overruled. The trial was then proceeded in on the merits of the case, when, after adducing evidence and argument of counsel, the cause being submitted, the court took time to consider.

And on the 24th day of January, 1849, a final judgment was rendered by the court in this case, and the same was entered on the minutes, as follows:

MARTHA PHIPPS AND MARY RICE
vs.
ELIJAH PEALE, trustee of the Agricultural Bank. } No. 1705.

This cause came on to be heard, and was argued by counsel, and the law and the evidence being in favor of the plaintiffs, it is ordered, adjudged, and decreed, that the plaintiffs, Martha Phipps and Mary Rice, do recover of the defendant, Elijah Peale, trustee and representative of the late president, directors, and company of the Agricultural Bank of Mississippi, the sum of twenty thousand and fifty-eight dollars, with interest thereon, at the rate of five per cent. per annum, from this date until paid, and that they have execution therefor upon the property, assets, goods and chattels, rights and credits, of the said president, directors, and company of the Agricultural Bank of Mississippi, in the hands of the said defendant, as trustee and representative as aforesaid, or which may hereafter come to his hands.

It is further ordered, adjudged, and decreed, that defendant pay the costs of this suit.

And on the 26th day of January, A. D. 1849, the follow[ing] order was recorded in the minutes:

M. PHIPPS and M. RICE
vs.
ELIJAH PEALE, trustee. } No. 1705.

On motion of Robert Mott, of counsel for defendant, it is ordered, that plaintiffs show cause on Saturday, the 27th instant, at 10 o'clock, a. m., why the judgment rendered herein shall not be set aside, and a new trial granted, on the grounds and for the reasons following, to wit:

1st. Because the judgment does not allow for the improvements made on the property while in the possession of the Agricultural Bank, but gives a judgment for the gross rents of the property.

2d. Because the interest is allowed on the rents and the profits.

3d. Because a great part of the plaintiffs' claim is prescribed by the prescription of three years.

4th. Because the judgment is contrary to law and evidence.

And on the 27th day of January, A. D. 1849, the following entry was made of record in the minutes:

M. PHIPPS and M. RICE
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

The motion herein taken by the defendant on the plaintiffs to show cause why a new trial should not be granted being returnable this day, was argued by Robert Mott, esq., for plaintiffs in rule, and S. S. Prentiss, esq., for defendants in rule, and after argument of counsel was submitted to the court, who took the same under advisement.

And afterwards, to wit, on the 31st day of January, 1849, the following judgment in rule was rendered by the court, and recorded in the minutes:

M. PHIPPS and M. RICE
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

The court having maturely considered the rule taken in this case by the counsel for the defendant on the plaintiffs to show cause why a new trial should not be granted, doth now order that said rule be, and the same is hereby, dismissed, and the new trial refused.

And afterwards, to wit, on the 31st day of January, 1849, the following remittitur was entered of record on the minutes:

SAME
vs. } No. 1705.
SAME.

On motion of plaintiffs' counsel a remittitur is entered on the judgment, of four hundred and forty-three dollars and seventy-five cents.

And on the 31st day of January, A. D. 1849, the judgment rendered in this case on the 24th January, 1849, was recorded on the judgment docket, and signed by the hon. Theo. H. McCaleb, as follows, viz:

December term, 1848.

NEW ORLEANS, *Wednesday, January 24th, A. D.* 1849.

Court met pursuant to adjournment.
Present, the hon. Theo. H. McCaleb, district judge.
Absent, the hon. John McKinley, presiding judge.

MARTHA PHIPPS and MARY RICE
vs.
ELIJAH PEALE, trustee of the Agricultural Bank. } No. 1705.

This cause came on to be heard, and was argued by counsel, and the law and the evidence being in favor of the plaintiffs, it is ordered, adjudged, and decreed, that the plaintiffs, Martha Phipps and Mary Rice, do recover of the defendant, Elijah Peale, trustee and representative of the late president, directors, and company of the Agricultural Bank of Mississippi, the sum of twenty thousand [and] fifty-eight dollars, with interest thereon at the rate of five per cent. per annum, from this date until paid, and that they have execution therefor upon the property, assets, goods and chattels, rights and credits, of the said president, directors, and company of the said Agricultural Bank of Mississippi, in the hands of the said defendant as trustee and representative as aforesaid, or which may hereafter come to his hands. It is further ordered, adjudged, and decreed, that defendant pay the costs of this suit.

Judgment rendered 24th January, A. D. 1849
Judgment signed 31st January, A. D. 1849.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And on the 27th day of March, A. D. 1849, the following order was made by the court, and recorded on the minutes:

M. RICE AND M. PHIPPS
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

On motion of P. C. Wright, esq., of counsel for defendant, and on filing his petition, representing that said defendant felt aggrieved at the the judgment rendered herein on the 24th January, A. D. 1849, and prayed for a writ of error, returnable to the next term of the Supreme Court of the United States; it is therefore ordered, that a writ of error be, and the same is hereby, allowed to said defendant, returnable to the next term of the Supreme Court of the United States, on him furnishing his bond, with Samuel Nicholson as surety, in the penal sum of five hundred dollars, conditioned according to law.

Petition for writ of error, filed March 27th, 1849.

MARTHA PHIPPS AND MARY RICE
vs.
ELIJAH PEALE, trustee of the Agricultural Bank of Mississippi. } No. 1705.

U. S. circuit court, 5th circuit, district of Louisiana.

To the judges of the United States circuit court, for the fifth circuit, within and for the district of Louisiana.

The petition of Elijah Peale, trustee, &c., respectfully showeth, that a judgment has lately been rendered in this honorable court in favor of

the above named plaintiffs, against your petitioner, as trustee as aforesaid, for the sum of twenty thousand and fifty-eight dollars; in which said judgment your petitioner is advised there is manifest error, and that your petitioner is aggrieved by said judgment. Wherefore, your petitioner prays for a writ of error to the Supreme Court of the United States, that the proceedings and judgment of this honorable court may be reviewed in said Supreme Court, and herewith tender the bond of your petitioner as trustee as aforesaid, with Samuel Nicholson as surety, in the sum of five hundred dollars for costs, according to law.

ROBERT MOTT,
Attorney for petitioner.

Order endorsed on the above petition.

Let the writ of error be issued according to the prayer of the within petition. New Orleans, March 27, 1849.

THEO. H. McCALEB,
U. S. Judge.

Bond for writ of error, filed October 23d, 1849.

Know all men by these presents, that we, E. Peale, trustee of the Agricultural Bank of Mississippi, as principal, and Elijah Peale and Samuel Nicholson as sureties, are held and firmly bound unto Phipps & Rice in the full and just sum of five hundred dollars, to be paid to the said Phipps & Rice, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated the —— day of October, in the year of our Lord one thousand eight hundred and forty-nine.

Whereas, lately, at a circuit court of the United States, fifth judicial district, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein said Phipps & Rice are plaintiffs, and said E. Peale, trustee, &c., was defendant, judgment was rendered against the said trustee, &c., defendant; and the said E. Peale, trustee, &c., having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit courts to reverse the judgment in the aforesaid suit, and a citation to the said Phipps & Rice, plaintiffs, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the ——— Monday of December next.

Now, the condition of the above obligation is such, that if the said E. Peale, trustee, &c., shall prosecute his writ to effect, and answer all damages and costs, if he fail to make —— plea good, then the above obligation to be void, else to remain in full force and virtue.

ELIJAH PEALE, *Trustee.* [L. S.]
ELIJAH PEALE, [L. S.]
Per SAMUEL NICHOLSON, [L. S.]
THOMAS NORVELL.

No objection is made to the sufficiency of the security, nor is the approval of the judge required, but nothing else is waived.

S. S. PRENTISS, *Plff's Att'y.*

Endorsed: Filed 23d October, 1849.

ED. RANDOLPH, *Clerk*,
Per J. W. GURLEY, *Dep. Clerk.*

Writ of error.—Filed 23d October, 1849.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the 5th circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you, or some of you, between Phipps & Rice, plaintiffs, to wit, Martha Phipps and Mary Bowers, wife of Charles Rice, by him authorized, &c., and E. Peale, trustee of Agricultural Bank of Mississippi, defendant, a manifest error hath happened, to the great damage of the said E. Peale, trustee, &c., as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct the error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court of the United States, this 22d day of October, in the year of our Lord one thousand eight hundred and forty-nine.

[SEAL.]

ED. RANDOLPH,
Clerk of the U. S. circuit court and eastern dist. of La.
Per J. W. GURLEY, *D'y clerk.*

Endorsed. "Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, in pursuance [of] the statute in such cases made and provided, this day of

BENJAMIN & MICOU,
R. MOTT, *Att'ys for pl'ffs in error.*

Filed 23d October, 1849.

ED. RANDOLPH, *Clerk*,
Per J. W. GURLEY, *Deputy clerk.*

And afterwards, to wit, on the 12th day of June, A. D. 1851, the following order was recorded in the minutes:

PHIPPS AND RICE vs. E. PEALE, trustree, &c. } No. 1705.

On motion of Robert Mott, esq., attorney for defendant, and on representing to the court that the said defendant felt aggrieved at the judgment herein rendered against him on the 31st day of January, 1849, and that the writ of error heretofore granted him in this case has been dismissed, and praying that another be issued, returnable to the next term of the Supreme Court of the United States, it is ordered that the same be issued as prayed, on said defendant furnishing bond with good and solvent surety in the penal sum of one thousand dollars, conditioned according to law.

Bond for writ of error.

Know all men by these presents, that we, Elijah Peale, trustee of the Agricultural Bank of Mississippi, principal, and Samuel Nicholson, surety, are held and firmly bound unto Phipps & Rice in the full and just sum of one thousand dollars, to be paid to the said Phipps & Rice, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twelfth day of June, in the year of our Lord one thousand eight hundred and fifty-one.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein said Phipps & Rice are plaintiffs, and Elijah Peale, trustee, &c., was defendant, judgment was rendered against the said Peale, trustee, defendant, and the said E. Peale, trustee, &c., having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Phipps and Rice, plaintiffs, citing and admonishing them to be and appear at a supreme court, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Peale, trustee, shall prosecute his writ to effect, and answer all damages and costs if he fail to make plea good, then the above obligation to be void, else to remain in full force and virtue.

ELIJAH PEALE, [L. S.]
SAM'L NICHOLSON. [L. S.]

Approved:

THEO. H. McCALEB,
U. S. judge.

Endorsed—"Filed 12th June, 1851."

J. W. GURLEY, *Clerk.*

And afterwards, to wit, on the 13th June, A. D. 1851, the following entry was made in the minutes:

PHIPPS & RICE
vs.
E. PEALE, trustee. } 1705.

On motion of J. M. Duffield, attorney for plaintiff, it is ordered that defendant show cause on Saturday, the 14th instant, at 10 o'clock, a. m., why the order granting a writ of error in this cause should not be rescinded and the said writ quashed, on the grounds on file, viz:

1st. A writ of error has been already granted.

2d. There is no showing of record in this court of its final disposition.

3d. By the act of Congress, a party to a suit is entitled to "a writ of error" upon final judgment in the court below, and not to more writs of error than one, if the first one be regular.

4th. The judgment of the supreme court upon the writ of error already made out is final and conclusive upon this court, when lawfully notified thereof.

5th. The issuance of a new writ of error in this cause is contrary to law and practice.

And on the 18th June, A. D. 1851, the following entry was made in the minutes:

PHIPPS & RICE
vs.
E. PEALE, trustee, &c. } 1705.

The rule herein taken on defendant to show cause why the order granting writ of error in this cause should not be rescinded and the said writ quashed, was this day taken up and argued by J. M. Duffield, esq., attorney for plaintiffs, and submitted to the court, reserving to the defendant the right of being heard orally, or by brief, at an early day.

And on the 23d July, 1851, the following order was entered of record in the minutes:

PHIPPS & RICE
vs.
E. PEALE, trustee, &c. } No. 1705.

The court having considered the rule to show cause why the writ of error, granted in this case, should not be set aside, doth now order that the said rule be discharged with costs.

UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and eastern district of Louisiana, clerk's office.

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify,

1691.
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that the foregoing 17 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Mary Phipps and Mary Rice vs. Elijah Peale, trustee, &c., No. 1705 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 6th day of November, A. D. 1851.

[L. S.]

J. W. GURLEY, *Clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 6th day of November, A. D. 1851.

THEO. H. McCALEB. [L. S.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Martha Phipps and Mary Bowers, wife of Chas. Rice, and Elijah Peale, trustee of the Agricultural Bank of Mississippi, a manifest error hath happened, to the great damage of the said Elijah Peale, trustee, &c., as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twelfth of June, in the year of our Lord one thousand eight hundred and fifty-one.

J. W. GURLEY,
Clerk of the U. S. C. C. and E. D. of La.

UNITED STATES CIRCUIT COURT.

PHIPPS & RICE
vs.
ELIJAH PEALE, trustee, &c. } No. 1705.

Writ of error.

Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the 5th circuit and eastern district of Louisiana, in pursuance [of] the statute in such cases made and provided, this 12th day of June, 1851.

ROBT. MOTT,
Att'y of plaintiff in error.

Filed June 12, 1851.

J. W. GURLEY, *Clerk.*

The United States of America, to Martha Phipps and Mary Bowers, wife of Charles Rice, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, wherein Elijah Peale, trustee of the Agricultural Bank of Mississippi, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twelfth day of June, in the year of our Lord one thousand eight hundred and fifty-one.

THEO. H. McCALEB,
U. S. judge.

Marshal's return.

Received 12th June, 1851, and, after diligent search and inquiry, ascertained that the within parties do not reside in this district. Returned June 26, 1851.

WM. S. SCOTT, *U. S. M.*
By O. P. WATSON, *D'y U. S. M.*

The United States of America, to Martha Phipps, greeting.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, wherein Elijah

Peale, trustee of the Agricultural Bank of Mississippi, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-one.

THEO. M. McCALEB,
U. S. judge.

Marshal's return.

I delivered a true duplicate copy of the within citation to Martha Phipps, at her residence in Howard county, Missouri, on the 20th day of September, 1851.

E. E. BUCKNER, *D'y M.*,
For JNO. W. TWICHELL,
U. S. M., D. Mo.

I certify that E. E. Buckner, [whose signature] appears above, is my lawful deputy, duly commissioned and qualified. St. Louis, October 3, 1851.

JNO. W. TWICHELL,
U. S. marshal.

The United States of America, to Mary Rice, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, wherein Elijah Peale, trustee of the Agricultural Bank of Mississippi, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-one.

THEO. H. McCALEB,
U. S. judge.

Marshal's return.

I delivered a true duplicate copy of the within citation to Mary Rice,